

SPEECH OF MR. DAYTON, OF N. J.,

ON

THE COMPROMISE BILL:

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Delivered in the Senate of the United States, June 11 and 12, 1850.

The Senate having under consideration the special order—being the bill to admit California as a State into the Union, to establish territorial governments for Utah and New Mexico, and making proposals to Texas for the establishment of her western and northern boundaries; which bill Mr. BENTON had moved to postpone till the 4th day of March, 1851—

Mr. DAYTON* said: I avail myself of the first opportunity presented since the report of the committee for the expression of my views upon the general subject before the Senate. I regret the delay that has occurred since the report and the speech of the senator from Kentucky; there would seem to have been wanting a proper promptitude upon the part of senators concurring in the views of the Executive in coming up to its support; and I have sometimes felt a sense of personal humiliation that we have been so slow in the expression of our views on the question. I purpose examining not so much the recommendation of the Executive as the plan of the committee. In doing so, I shall make no antagonism between them; and I shall place myself in no point of antagonism with the committee or with any member of the committee, and least of all with its distinguished chairman. Sir, I have followed him at a distance too long to desire or even to consent to a position of personal antagonism now. When we saw the result of the action of the committee, a sense of general surprise and disappointment was felt in this chamber, as well as in the country at large. Here was a committee organized for harmony, got up with a view to conciliation, and intended to reach a united result. It was thus that the mind of the country was to be affected by the moral force of a grand compromise. But, sir, when this report comes in, we find that, instead of being the result of a harmonious compromise, it is literally the offspring of confusion and the child of discord. The report was scarcely born before it was denounced by many of its putative fathers. They seized upon it, strangled it, and would have choked it dead in its cradle but for the indomitable energy of one man, who seized it with one hand and defended it against all "comers" with the other. Although dissenting from his positions, it was a spectacle of moral grandeur which I could not but respect and admire.

But, sir, when the result of this committee's consultation (with almost as many dissentients as concurrents) became apparent, it required much confidence in the committee to still persist in its own plan; and permit me to say, with great respect, that it required still more confidence on the part of the chairman, under such disastrous cir-

*Mr DAYTON deems it proper to state that he has omitted certain remarks, somewhat personal, occurring in the beginning of his speech, because he is informed that the particular remark to which his more especially were a reply has been omitted in the printed speech of the gentleman making it.

cumstances, to say that he "had seen with profound surprise and regret the persistence" (for so he is compelled to regard the facts around us) "of the Chief Magistrate of the country in his own peculiar plan." Mr. President, I recollect that during the last presidential canvass, a New York politician, somewhat distinguished for piquant sayings, (whose father was at that time an irregular democratic or free-soil candidate,) expressed his unbounded surprise that General Cass would persist in running his name just to distract the democratic party. [Laughter.] Now, sir, with all proper respect, it seems to me that, in view of the action of this committee, and its utter want of harmony, the surprise and regret referred to would naturally have been looked for in another quarter, and from an opposite direction. I think—and my belief is that the great body of the whigs of the North, at least, will agree with me—that the conciliation and effort at harmony referred to should have come from this end rather than from the other end of the avenue. Why, sir, what have we seen? After weeks of struggle, you have organized your committee; they have gone into session—thirteen learned doctors consulting over the body of our poor dying patient; and yet the thirteen have not united upon the mode of treating a solitary one of the five gaping wounds of which the patient is said to be dying. Seven is a majority of that committee. Why, sir, the President, with his six members of the cabinet, would have formed the majority, if they had been part of that committee; yet, under such circumstances, it is considered a matter of surprise that there was not some intimation on the part of the Executive that he would abandon his own recommendation for that of the committee. The suggestions of the President, when made, were certainly well received by the country at large. In the beginning, he proposed—what I understood the South had at first asked—non-intervention; and then, sir, when we come in, and, under the recommendation of the Executive, work up to that point—no interference in the Territories at all—we find that the stake is pulled up and set down further on, and we are again required to work up to it; and we are told, further, that unless we do so, nothing can be done—that the question is, the plan of this committee or nothing. Sir, if that be so, I regret it deeply. If it so turn out, I shall ever believe that it is the unfortunate result of this attempt to accomplish more than the state of the times and circumstances would permit.

Mr. President, I desire now to make some remarks upon the plan of the committee. I do not compare this plan with any other, because, although newspapers and speeches have designated one as the plan of the committee and the other as the plan of the Executive, the Executive itself never assumed any such title for its recommendation. It did no more than recommend a single measure. It is indebted for its name to speech-

makers and journalists. It was no *plan*; it professed to be no grand scheme for settling all the ills which might possibly afflict the body politic; it was the recommendation of a simple and a single measure. The Committee of Thirteen have brought forward a grand scheme, and insist on calling the President's recommendation a scheme or plan like their own, and ask a comparison. They are not susceptible of comparison. The President's recommendation and the plan of the committee go together, until the recommendation of the President stops. They are identical to a certain point; and if you take up the remarks of the distinguished senator from Kentucky, [Mr. CLAY,] you will find it so avowed by him. He says that the Executive recommends the introduction of California as a State, and so does the committee. The Executive recommends non-intervention as to the subject of slavery, and so does the committee. They are, therefore, identical, in the view of the senator, so far. From that point forth, the plan of the committee is a plan of its own, and it must stand or fall, not by comparison with an opposite plan, but by its own single merits.

The Executive recommends the admission of California as a State; and the committee concur in it, with certain other matters. Now, sir, upon the point of preference between the two recommendations. The Executive recommends a single act, direct, plain, and straightforward. He says, if California deserve upon her own merits to be admitted, admit her; if she do not, reject her. That is the plain, direct, and straightforward method of legislation, divested of all extraneous, outside influences. What does the committee do? They recommend the admission of California, thereby admitting the Executive to be right; but, in addition, from motives of policy or political strategy, they recommend other matters, wholly extraneous to the main proposition—other and weaker measures, to be carried along by this, the stronger one. I submit, in the beginning, that the recommendation of the Executive, thus far, is the more unexceptionable and proper course of legislation; that California alone is more correct than a proposition which connects it with and overrides it by other matters. Then, sir, as to the Territories. The Executive recommends non-intervention upon the subject of slavery, and the committee recommend non-intervention on the subject of slavery. Both plans, as respects this exciting topic—which alone moves so deeply the public mind—are thus far identical; they do nothing at all, (at least the report of the committee professes to do nothing,) although some senators suppose an advantage is gained to the South by the extension of a territorial government there. When the plans, therefore, commence to differ, they differ not in relation to slavery—not in reference to the matter about which the country is so deeply excited—but to matter about which the country knows little, and the great majority care less, to wit: the civil organization of these Territories aside from slavery. The want of a civil organization of the Territories is not one of the five gaping wounds which have been so graphically described. It is said that it is our duty—that we are under treaty obligations to provide the inhabitants of those Territories with governments. The ninth section of the treaty of Guadalupe Hidalgo provides:

Mexicans who, in the Territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article. SHALL BE INCORPORATED INTO THE UNION OF THE UNITED STATES, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the constitution, and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion, without restriction.

That, sir, is the provision of the treaty. At the proper time, to be judged of by the Congress of the United States, the inhabitants of these Territories are to be admitted to the privileges of citizens of the United States. Something is thus left to our discretion. In the mean time they are to be protected.

Now, sir, what is the condition of these Territories? First, there is Utah. Where that is it is somewhat difficult to say. It is, at all events, a certain somewhere, known a few weeks since as Deseret; lying between certain portions of the Rocky mountains. Its southern boundary (which is conterminous with another territory) has never been seen, except with the aid I suppose of a telescope, and by one the only explorer that has ever been there. And when he saw it, from his northern line of route, he saw but some of the topmost crests of the high mountains of the range. That is the assumed boundary fixed by the bill, conterminous between this Territory and the adjoining one. And, now, who are these persons, thus reaching back their hands to the American government for the extension of its laws over them? They are the self-expatriated followers of Joe Smith, the Mormon. They have buried their prophet; they have abandoned Nauvoo; they have gone voluntarily away, to relieve themselves from the wholesome restraint of our laws and for the enjoyment of a special system of their own. And at last, having squatted in the great basin of the Rocky mountains, at least a thousand miles from everywhere, they turn around and demand government at our hands! Our sympathies are excited, and our patriotism is invoked to extend forthwith the benefit of our laws to this wandering tribe. Sir, if half that was said of them be true, unless their character has been bettered by their residence in the Great Basin, they are little calculated to do credit to the name of American citizens. We recollect the scenes which took place in Missouri and Illinois, and unless their morals and manners have improved, (if what were then said of them be true,) so far from their needing protection against the Indians, the Indians may soon have better cause to demand protection against them; still protection against the Indians requires a military force only, and protection they should have. But, aside from this, the want of a civil government cannot constitute a part of the five gaping wounds. Sir, this is no wound; it is hardly an outside excrescence. It may fester and burst, and fester and burst again, and yet it can never affect or touch the health of the body politic.

New Mexico is the other of these Territories. I do not pretend to know very much of the present condition of New Mexico. It is said that it is under a military government. This military

government, I infer from what I see, is a government exerting its powers principally for the protection of the inhabitants of the country against hostile Indians. I suppose that the laws, the magistrates, the whole municipal regulations of that Territory, remain now substantially as they were before the country was transferred to us. The inhabitants are the same, they live under the same system, and are protected in precisely the same way—not politically, but civilly and judicially, in all the property, business, and social relations of life. But then it has been said that the military government which has been placed over this Territory is derelict in its duty, and that when a Texan commissioner presents himself there, assuming to exercise jurisdiction, instead of discharging its duty it abandons the people. If this were so, it would not touch the question. But for what was that military government, or rather this lieutenant colonel, with a few troops, put there? It was, as before said, to protect the inhabitants from violence, from Indian outrage, and for matters of that kind. I do not suppose that a military government has or ought to have anything to do with the civil government of the Territory, and the orders of the Executive seem so to indicate.

When, therefore, the Texan commissioner, one solitary man, without a retinue even, and without a musket, presented himself with a view to issuing writs for an election for small county offices, what was the lieutenant colonel to do? To bring forward a guard or present a platoon? Obviously not. This single man was there to exercise some character of jurisdiction about which I shall speak more fully directly, which if it were exercised wrongfully would be void, and so declared by the courts. And how, pray, was this lieutenant colonel to interfere and bring his power to bear against this single individual, who was thus there for a civil purpose only? Why, I submit with great deference that he should not have interfered; that he did right to leave the two claimants to settle the question of civil jurisdiction in the courts. But had Texas thought proper to go there with an armed force, for the purpose of taking military possession of the country, expelling a judicial authority then there, she would doubtless have been otherwise met; she would then have been taught that there was another power besides Texas, whose constitutional duty it was to protect New Mexico, and that Texas, like every other State, has a common arbiter, a common judicial tribunal by which her civil rights are to be decided. But to the Texan commissioner, coming as he did, one man, in the garb of peace, and upon a claim of civil right, the lieutenant colonel says, in substance, I will have nothing to do with the question; I will not aid you, nor will I oppose you.

Sir, such is the condition of New Mexico. Now, under these circumstances, the plan of the committee recommends the establishment of a territorial form of government. I do not mean to say that there ought not to be a government for those Territories; that, aside from the difficulties connected with its organization, it would not even be better to give them a territorial government—I do not mean to say that. But the difficulty in the way is that same Wilmot Proviso which the senator from Michigan chooses

to consider as dead. Dead! How so, sir? Does he refer to the vote taken in the other house? If so, we know very well how and under what circumstances that vote was taken; that it was no test of what that house will do, when this question shall be presented upon a regular territorial bill. The Wilmot Proviso dead! Let me tell gentlemen that the thing is "scotched, not killed." And even that much has been done, not by their arguments, nor their reports, but it has been done by the Executive recommendation to leave the subject alone, to stand clear of the Territories, where alone this so-called monster has its lurking place. But if you go to rummage in its domicile, to disturb its domain, gentlemen will see if they do not stir up this thing to life and full action again.

It is a grand mistake of the senator from Michigan and others to suppose that this thing is dead. In assuming this, he deals in that branch of dialectics known as *petitio principii*, or begging the question. It is the very thing to be proved. And whatever may be the opinion or feeling in this chamber, when the trial comes in the other house upon a direct territorial bill, you may judge of the future from the past. The instructions of the legislatures of almost every free State indicate the result in advance. Those instructions were not that they should insist on territorial bills, but that, in the event of the passage of such, the ordinance of '87 should be inserted as a part. This proviso difficulty yet remains. It is that great stumbling block in the way of the formation of territorial governments which has existed from the beginning; and exists yet. Our treaty obligation was to give the inhabitants of the Territories the entire benefit, at a proper time, of the institutions of the country—to give them all their rights as American citizens. The President, in expressing his willingness that New Mexico shall speedily become a State, has even gone further in discharge of these obligations than a territorial bill would go. He has not meted out to them those rights in the narrow, contracted, and stinted form of a territorial government, but concedes to them, so far as his willingness goes, the full enjoyment and communionship of American citizens. It is idle, therefore, to say that he has shrunk from the treaty obligations.

But, sir, it appears, unfortunately, in this case, as in others, that there are persons so fastidious, so sensitive, that unless the thing be done in their own way, and according to their own view of what the treaty obligation is, it cannot be done at all. They say to us, What! New Mexico a State? Why, it is a burlesque upon the solemn duty of making States. Mr. President, I do not look with much favor on it myself. I never had any great opinion of New Mexico, nor of its colors and castes; but I believe that it has a population of more than fifty or sixty thousand, as is alleged. My understanding has been that the population of New Mexico, over and above the wild Indians, was from seventy to seventy-five thousand, of which the Pueblo Indians constituted about ten thousand only; but in this last I may be mistaken; and the Indian agent, in his report, informs us that there is no better population in New Mexico than these Pueblo or civilized Indians. And if this population be not capable of self-government, what do you propose by your territorial bill? Do you not, by that, make them agents for their own

government? It is true, you send out three or four territorial officers; but the legislation of the country is still the work of the people. They will legislate for themselves under your bill, just as they would legislate for themselves provided they were incorporated as a State of the Union. Still, I do not wish to be understood as saying that, in the absence of any difficulties growing out of the question of slavery, I would prefer the present admission of New Mexico as a State. I will not say so. But this difficulty meets us directly; we cannot escape it—at least I see not how; and a State government, or no government, except that which they now have, is better than an attempt at a territorial government with the obstacle of the Wilmot Proviso.

But here all comparison (if comparison it may be called) between the recommendation of the Executive and the plan of the committee ends at once. From this point the committee starts alone; from this point none can say the plan of the committee has a rival; its success or defeat, its glory or shame, is all its own. It comes announced as a great pacificator, having healing in its influence, throwing oil upon the troubled waters. Ay, sir, it is not the first time that the performance has not come up to the promise; it is not the first time that the play has not equalled the bill. This plan of the committee, in its first step towards restoring harmony and allaying excitement, leaves, they themselves say, the question of slavery in the Territories—the very seat of disorder and confusion—untouched behind it. It advances into the domain of discord for further conquests in behalf of harmony, leaving the entrenched camp of its enemy in the rear. My great objection to this scheme is, that while it is called a compromise of all conflicting questions, it, in fact, will finally settle little, and compromise less; that it will not accomplish what it affects to accomplish; and that there is no consideration adequate to the sacrifice the North is called upon to make.

Now, permit me to approach the first question which the committee deals with, on its own plan; and that is, the settlement of the boundary of Texas. There is much complaint now made that the plan of the Executive administers no remedy for this evil. Why, what was the Executive to do? It called the attention of Congress to the settlement of this question. Was the Executive to run lines—to make propositions? It could not do that. It did the little that it was necessary it should do, by asking the attention of Congress to the subject. But now this matter of the boundary line of Texas has become important, as it is said; because, in addition to other chances, its settlement will avert a civil war. Sir, this was a startling announcement, a sad addition to all the other evils which seem to cluster around us. The country, I take it, was scarcely prepared for so unexpected and startling a development. A civil war! It is very important, if correct in point of fact, and it will serve much to enhance in the public eye the value of this grand scheme of compromise. On what facts does it assume that a civil war will be averted? I cannot presume that Texas—one of the law-loving States of this Union—will attempt for one moment to enforce a doubtful claim of jurisdiction by arms. If she do so, however brave her citizens, (and we needed not the intimation of her senator to know that,) I

take it for granted she will “find a lion in her path.”

The constitution devolves the duty of protecting the Territories upon the general government, which owns them, and it is an obligation which, I have no doubt, would be promptly met. But respect to Texas forbids the idea of an attempt by her at violence upon such a question—a mere question of civil right and civil jurisdiction—for the full settlement of which the constitution of the United States provides a fit and proper arbiter. I suppose, by a civil war, was meant something like the riot which recently broke out in the streets of Santa Fe—fomented, as the newspapers say, by a Texan soldier attached to that portion of the army stationed there. This was promptly suppressed, it seems, by our military force then upon the spot. At all events, war cannot be made by one solitary man, some three hundred miles, at least, from any one to support his claim. And that is exactly the condition of things between New Mexico and the Texan commissioner at Santa Fe. This question will ultimately be decided, I trust, by our judicial tribunals.

Mr. HOUSTON. Never! Never!

Mr. DAYTON. Never? Sir, does the senator from Texas say never? By what right, I ask? Is the State of Texas more than one of the sovereign States of this Union? I hold in my hand the constitution of the United States, which says that not only upon all controversies between the States, but “in all controversies to which the United States is a party, the Supreme Court shall have jurisdiction.” And pray, sir, why may not the Supreme Court as well settle the boundary of Texas as the boundary between Massachusetts and Rhode Island, and the boundary between Massachusetts and Connecticut, and the boundary between New York and New Jersey, and the boundary between Delaware and New Jersey, and the boundary between half a dozen other States of this Union, involving as much in point of value and of interest as the boundary between Texas and New Mexico? Why is it that Texas alone can override the constitution? The question of State boundaries was one of those very questions for the settlement of which a supreme judiciary was provided; and yet the senator before me says never! Sir, there is hardly an old State of the Union whose boundary has not at some time been settled or questioned in this way. Why, then, I ask again, with all respect to Texas, is it that that State alone, almost the last of the sisterhood, is to ride rough-shod over the constitution? Why not submit to the common arbiter?

Mr. RUSK. I will answer the question.

Mr. HOUSTON. It can be answered at the proper time, when the senator has got through.

Mr. RUSK. I thought, perhaps, the senator desired an answer now.

Mr. DAYTON. I can anticipate the suggestion which the honorable senator would make; and in the course of my remarks I may attempt to answer it. But I will proceed in reference to the point in hand. The senator from Massachusetts, [Mr. WEBSTER,] as well as the senator from Georgia, [Mr. BERRIEN,] has already expressed the opinion that the Supreme Court has jurisdiction of the question now, while New Mexico is yet a Territory; and in that opinion I concur, though

without upon my part much examination. If this be so, it is not even necessary to await the tardy action of New Mexico; the door is open; the test can be applied now; yet this plan of the committee proposes to pay ——— millions for the claim or title of Texas to that part of New Mexico east of the Rio Grande. Now, the wisdom of buying or litigating a title always depends much upon your estimate of its strength. I beg, therefore, to look a little into this question of the Texan title. Our friends from Texas, I observe, are warm on this question. They get excited, and can hardly see how any person can honestly differ with them. They think that were it not for this question of free soil, no man would have any doubt about the Texan title. It is needless to argue in that way, because we may answer that, were it not for their slave prepossessions, no man could doubt the title of New Mexico to her soil; and when we have thus recriminated the argument is balanced, and neither has advanced a step. I suppose that the judgments of all are liable to be operated upon indirectly, even with the best possible intentions; and permit me to say to the senators from Texas that they are in an especial degree liable to these indirect influences; for, in addition to the general question of slavery, they represent the very State claiming title; they are parties to the record. I trust, therefore, they will extend a little charity when we perchance differ in judgment. I admit cheerfully that the honorable senator, [Mr. Rusk.] in the speech which he delivered the other day, made the best use of the scanty materials on which the title of Texas is founded.

But, sir, that title to New Mexico is bad; it is unsustained by any principle which can apply to such a question. It is just one of those cases where, if the question were between man and man, and I should be asked by a client in behalf of New Mexico what he should do, I would say to him the thing is yours—pay so much only as the expense and vexation of a lawsuit would be worth; to seek for another title is literally to abandon the substance and look for the shadow.

But to the *title*. How has Texas herself regarded it? Has she in her sovereign capacity claimed or disclaimed it? According to my understanding of the past history of her legislation, she herself has utterly disclaimed all title to New Mexico. I am not now speaking of the Lower Rio Grande. I now beg leave to call the attention of the Senate to a little historical or political detail.

Texas, in the year 1836, became an independent State. At that time she passed laws to organize her counties; others to establish her judicial districts; others to apportion representatives in her Congress to all parts of the State; but neither counties, nor districts, nor representatives did she give to New Mexico, though that population, if owned by Texas, was greater at that time than the population of Texas herself. So far as I can ascertain, she never in any of her laws came within hundreds of miles of the New Mexican line. At that time, too, 1836, she had her treaty with Santa Anna, and had defined the Rio Grande as her boundary. Things continued thus down to the resolutions for annexation in 1845, with much intervening legislation of like character, but without the slightest reference to New Mexico. This annexation was, as we all know, in

effect, a treaty for the transfer of the entire allegiance of the people, and actually sunk the sovereignty of the country of Texas, and every part of it; and yet in that convention of Texas which accepted the terms of annexation no man from New Mexico was found; no man of New Mexico was invited; no man within hundreds of miles of New Mexico held a seat. Let us follow this on. After annexation, Texas was safe; then she was one of the sisterhood; her independence was fixed. Her legislative assembly met in the year 1846, and now, being one of the sovereign States of this confederacy, she again looks over her lines of boundary. She almost commenced anew, and perfected her system of internal organization. Her laws of that year are most important as indicating the extent, the full extent, of her claimed jurisdiction. I hold those laws of that year in my hand. The very first act she passed after annexation with this government was to provide (28th February, 1846) for the election of representatives to the Congress of the United States. For this purpose, she divided the State into congressional districts; but she takes no notice of any claim for representation upon the part of New Mexico. Then, again, a little further on, (April 11, 1846.) she established "judicial districts of the district courts" for the State; but she did not go within a long way of New Mexico. Then, again, on the same day, she passed "an act for the enumeration of the inhabitants of the State of Texas." The senator from Texas can say if any New Mexican was ever counted in that enumeration. Again, she proceeds to further organize the counties of the State, and she established at that one session thirty-one new ones, through all her jurisdiction; but she did not approach within a long way of New Mexico. She then passed her acts for the taxation of estates, real and personal, of residents and non-residents; and the senators from Texas can say if a cent of property, real or personal, was ever taxed in New Mexico. Yet this is the first attribute of sovereignty; and if the right existed, it is the first that Texas would have exercised and the last she would have yielded.

This was the state of things the year after the treaty of annexation, when Texas was one of the States of this Union, and was perfectly safe to claim all her rightful jurisdiction. Sir, her legislature made no claim. And permit me here to say that this was the only way in which she, as a sovereign power, could claim jurisdiction. It is idle to talk of what was thought by this man or that, or what was said in the street. Her laws are the exponents of her intention. This, then, was the situation of things in 1846, and in that way they went on from 1846 to 1850. Congress met the first Monday of December last, and it was soon mooted about that there was to be a scheme of compromise, by which all things were to be settled, and among other things the boundary of Texas. It was discussed in the press, it was talked of in private and political circles and now, in the very midst of these things, when the question was whether Congress did not intend to settle all these questions, Texas stepped forward, and, by a short act of legislation, claimed jurisdiction over all New Mexico east of the Rio Grande. I call attention to that act. I hold in my hands the acts of the legislature of Texas for the year 1850. On the 4th of January la

an act was passed entitled "An act to provide for the civil organization of the counties of Presidio El Paso, Worth, and Santa Fe." The substance is found in the first section, which is as follows:

Be it enacted, &c., That the governor shall nominate, and by and with the advice and consent of the Senate appoint, one commissioner, whose duty it shall be to organize the counties of Presidio El Paso, Worth, and Santa Fe.

The second section then provides, in brief, that this one commissioner lay off said counties into convenient districts and election precincts, and order an election for the county officers, who are to hold until the next regular county election. You observe that Texas could not wait even until her next regular election!

Mr. RUSK. If the senator will allow me, I will state that by previous legislation, I think in the year 1848 or 1849, Santa Fe was created a judicial district, and the judge sent out.

Mr. DAYTON. I have looked with some care through the statutes of Texas, and I found no such act; but, presuming the law must have escaped my attention, may I now be permitted to ask the senator from Texas whether any court was ever held by that judge in Santa Fe?

Mr. RUSK. I believe not.

Mr. DAYTON. Then it does not amount to much; it was no court, and the inference, from the appointment of a judge, is more than counterbalanced by the fact that he never even assumed to act. I have the records before me. New Mexico has never before been organized by Texas into counties, nor formed into judicial districts. Nothing was done upon these subjects until it was agitated here in Congress, and then, pending the discussion here, the Texans sent a commissioner off some three or four hundred miles to organize forthwith four new counties. If these were intended as a real thing, and not for effect, I find this somewhat singular fact in a subsequent act of this same session. In an act apportioning the senators and representatives among the counties of the State—the entire State is divided into twenty-six senatorial districts—they put these four new counties, being all that vast section of country commencing sixty miles below El Paso and embracing all New Mexico, with a population equal I suppose to nearly one-half of the present population of Texas, into one senatorial district. They allow them one twenty-sixth of the representation in the senate of Texas, and in the house they allow two representatives out of sixty-nine, being one thirty-fourth and a half part of the whole. If this be intended for a real thing, a permanent matter in the organization of their legislature, it is certainly a somewhat scanty allowance of the right of representation to those citizens of Texas who inhabit the large province of New Mexico, and down to sixty miles south of El Paso.

Mr. President, I do not apprehend that the course of Texas herself in her legislative history is such as to show that she herself at any past time claimed jurisdiction over this country. She has left her title unasserted for fourteen years, and up to the point of time when it was doubtful whether her claim would not be satisfied; and then she carries her legislation, and sends off a commissioner. And, now, upon what are we told that her title depends? In the able speech of the sena-

tor from Texas, to which I have referred before, we are told that that title depends, first, upon the sword, which unsettles all boundaries, and that it consists of two parts: 1. Title by revolt; 2. Title by treaty. This, in common parlance, would be title, first, by conquest and possession; second, by deed.

Now, what was the title of Texas, acquired by revolt or revolution? Why, the very words *revolt, revolution, ex vi termini*, confine the title to that country which revolted and was revolutionized. New Mexico was not within three hundred miles of the settled portion of that country which was revolutionized, and had nothing to do with it. Texas cannot claim New Mexico, then, by revolt or revolution. The government of the State of Texas having revolutionized, and having sustained itself, she is entitled to the extent of her ancient acknowledged boundary; just in the same way as an individual, who happening to be in possession of a mansion house, with a farm, where the lines are clearly marked, shall be considered as legally possessed to the extent of the known boundary. Thus Texas or her government may be considered legally possessed by conquest and occupancy to the extent of her known boundary, but no further. But, before I pass on, let me say here, that I do not mean to contest the title of Texas to that part of the country between the Nueces and the lower Rio Grande, up even to her old northern line, which was much below El Paso. Although, upon strict principles of national law, she would not, in my judgment, be entitled to it, yet, in reference to the lower part of that country, at least, there was a *quasi*, a mixed possession; and the United States has committed itself by its acknowledgments in behalf of Texas too far now to contest its claim. But it seems to me that the United States has a thousand-fold better title to the Lower Rio Grande than Texas has to New Mexico. Texas says that her title consists not of revolt only, but that she has also a paper title.

Now, sir, what is this paper title of Texas? It consists of a treaty with Santa Anna in 1836, and the act of the Texan Congress defining her own boundary, passed in December of the same year, and the subsequent treaty of Guadalupe Hidalgo in 1848. I have already had occasion to say that the treaty with Santa Anna (so called for brevity, although it purports to be a mere article of agreement) never has been enforced. The senator from Texas says that it must be recollected that the government was at that time a military despotism; but the treaty on its face shows that it was not a military despotism, and that the Texans themselves treated with it as a government of such powers as our own. The tenth article of that treaty is a stipulation on the part of Santa Anna and some of his officers that, on their parole of honor, they would pledge themselves to exert their best influence to have the treaty ratified by Mexico; and, in the event of its not being ratified, they pledged themselves not to take up arms against Texas. The treaty shows upon its face that this negotiation on the part of Texas was made with officers who had no power to form a treaty, and who merely gave a pledge to exercise their influence to have the treaty ratified.

Mr. RUSK. One word in explanation. The cause of the insertion of that article in the treaty

was this: Santa Anna was at the head of the military despotism of Mexico, and at the head of the army. Immediately after he was taken prisoner, it was believed that the government would be revolutionized at home, as Santa Anna overthrew the constitution of 1824, which created a federative system of sovereign States, and turned them into mere departments, subject to a great central government in the city of Mexico. He had to do this by force of arms. One State particularly, Zacatecas, made a desperate resistance, and never would have been conquered, in my opinion, had not some of the officers in command of the Zacatecans been bribed. The government of Texas thought that probably the government of 1824 would be restored on the capture of Santa Anna. If it would not be trespassing too much upon the courtesy of the honorable senator, I would say that I have never bottomed the title of Texas on the treaty with Santa Anna. It is the treaty of Hidalgo upon which we base our claim.

Mr. DAYTON. I will come down to Hidalgo in a moment. I do not mean to overlook that, in the regular tracing out of this Texan title. I cannot argue the whole question at once, and the senator's speech I found based the Texan claim on this treaty with Santa Anna, which he copied entire.

I was saying, sir, (and I do not see that the explanation of the honorable senator at all alters the nature of the case,) that this treaty of 1846 was a mere article of agreement between certain officers, and it shows upon its face that the Texan government, with whom the treaty was made, knew that those officers had no authority to make a treaty. It further appears, from the eleventh article of that treaty, that after Santa Anna was dismissed, the other Mexican officers were to be holden as hostages until it was seen whether or not the treaty would be concurred in by Mexico. It is perfectly obvious, therefore, on the face of this agreement, that no title can take its origin there. The case now is just this, and nothing more: The Texan government, by an act passed in December, 1836, claimed New Mexico, (then in the actual adverse possession of another power,) and up to the 42d deg. north, the latitude of Boston, though no Texan had ever been within one thousand miles of that line. This is the basis of her claim, if she has any. Now, suppose that South Carolina, or, not to be invidious, Virginia, should revolt for some cause or other, from the federal government, and should sustain herself or themselves by force of arms, and should take prisoner our commanding general, and he should think proper to enter into an agreement with them, acknowledging their independence, and running the lines of South Carolina up around North Carolina; or, if it were Virginia, running her line up around Ohio and Pennsylvania, and that he should pledge himself to use his best efforts to get such a treaty ratified: would such a treaty be considered by us as anything but a mockery? Yet it would be worth exactly as much as the basis of this claim of Texas to the province of New Mexico. The different provinces of the Mexican republic stood in relation to their central government as the States of this confederacy stand to the federal government, and it was the central government, and the central government only, that could agree to any transfer of these Territories, and the treaty

so shows upon its face. This treaty, therefore, may be considered out of the way, as operating to convey title; and if so, the act of Texas defining her boundary, which was based on it, and it only, amounts to nothing.

But it is said that the government of New Mexico itself recognised the binding force of this treaty, and the senator from Texas, in proof of this, gives the letter of the Mexican Secretary of War, the only evidence given to support that position. Why, Mr. President, this letter was before the date of the treaty; it was to General Filisola, second in command, and in reference altogether to other objects. He writes thus to General Filisola:

His excellency the President *pro tem.* counts upon your excellency's directing all his efforts to saving the remainder of the army, by concentrating it, so as to render it more respectable, placing it in a convenient place for receiving provisions, for which the most efficacious measures are adopted. *The preservation of Bexar is of absolute necessity, in order that the government, according to circumstances, may act as they see fit.*

He is told to save the army, not by a treaty, but "by concentrating it;" not to transfer all the country east of the Rio Grande, but that "the preservation of Bexar" is of absolute necessity. Bexar is not only on the east side of the Rio Grande, but, if I recollect aright, it is on the eastern side of the Nueces, perhaps sixty or seventy miles from the Rio Grande; and yet this letter of the Mexican Secretary of War is produced, and the only paper that is produced, to show the recognition of this treaty. It was written before the treaty was made. It was not written with reference to a treaty, and the only injunction it contained was that the Mexican commander should take care to preserve Bexar, &c.—an act utterly incompatible with a surrender of the country to the Rio Grande. Now, how has the government of Mexico ever, at any time, recognised the binding obligation of this treaty? My friend from Ohio [Mr. CORWIN] has just placed in my hands Maillaird's History of Texas, published in 1842, in which it is said, among other things, on this subject—

The Mexican government had passed a decree on the 20th of May annulling all stipulations entered into by Santa Anna while a prisoner, &c.

This shows that the government of Mexico not only never recognised the binding obligation of this treaty, but that she, by express decree, annulled it; and yet it is pretended that that government, by some act of her own, recognised this treaty; if so, what is it?

In the history of this title, the next thing which is relied on, is the treaty of Guadalupe Hidalgo of 1848, and the map accompanying that treaty. We have heard a great deal of this map in the course of this discussion. The senator from Texas has frequently referred to it. He says that this government entered into a treaty with Mexico to settle the line of boundary between the two countries, and that, connected with that treaty there was a map which laid down all New Mexico as lying to the west of the Rio Grande, and that we are bound, therefore, by that map. If I might be permitted to use a professional term, I would say of that map, that it was "*res inter alios acta.*" It was used between Mexico and the United States, and for an entirely different purpose than to speci-

by the bounds of the States east of the Rio Grande. The United States was negotiating with Mexico in-reference to their line of future boundary. The object for which the map was used and attached to the treaty was to designate the western boundary of New Mexico, which western boundary was to become the line of demarcation between the two countries. For the purpose, therefore, for which the map was used, it was binding, but it was binding for no other purpose. I will now call the attention of the Senate and of the senators from Texas to a fact connected with this treaty map. It is perfectly evident that the map was not referred to for any such purpose as claimed by the senators from Texas. Let us see what the treaty itself says on this point in describing the map. Article 5 says, among other things:

The southern and western limits of New Mexico, mentioned in this article, are those laid down in the map entitled "Map of the United Mexican States, as organized and defined by various acts of the Congress of said republic, and constructed according to the best authorities. Revised edition. Published at New York, in 1847, by J. Disturnell." Of which map a copy is added to this treaty, bearing the signatures and seals of the undersigned plenipotentiaries.

It was "the southern and western limits of New Mexico" only it was intended to describe. It could refer to nothing else, and on its face shows that it would have been absolutely false had it referred to the eastern boundary of New Mexico at all; for it declares the map is according to the various acts of the Mexican Congress and the best authorities. There is not and never was an act of the republic of Mexico, or any authorities whatever, that show that New Mexico lay altogether on the west side of the Rio Grande, and no man pretends it; and yet it is said by the treaty that this map was a correct map. But correct for what? Obviously for the purpose for which it was used, and nothing else. We all know, if we go beyond that purpose, that the description of the map states a fact which is not correct. There are no acts, no authorities anywhere to be found, which lay down New Mexico as west altogether of the Rio Grande; and yet it is supposed that because this map is attached to the treaty of Hidalgo, it is binding to this government, not in reference to the western boundary of New Mexico—which was to be the line of boundary agreed upon by the two countries—but in reference to the eastern boundary, of which Mexico, at that time, was not treating at all. The map proves nothing which the senators contend for, and I pass it without further consideration.

But then it is further said that the United States government, in negotiating this treaty with Mexico, acted as the agent or mere trustee for the State of Texas, and that *quo ad hoc* she must have the entire benefit of the treaty! Now, I beg to take issue on these points. I say the United States was not acting as the agent or trustee for Texas in this matter, but on her own account. So far as repelling invasion from *known* Texan soil was concerned, the United States acted as the agent, or rather as the sovereign power, protecting the subordinate State, and she can ask nothing at the hands of Texas for the exercise of that act of sovereignty. But, so far as the extension of the boundaries of the country goes, she was not acting as the agent of the government of Texas; and when you say she was, you beg the entire

question. You *take it for granted* that the boundary of Texas was the line of the Rio Grande to the 42d degree north latitude. You assume that to be true which is the very point to be proved; and then you say that the government of the United States acted as the agent of Texas in repelling Mexico and settling the boundary. Why, that is the very question in issue. You prove the fact by assuming its truth! No, sir, that cannot be. The United States, if acting as the trustee, could not, as you say, speculate in the trust; but that is no reason why the trustee could not buy or conquer adjoining property; and that is exactly the condition of things in regard to this matter.

But the senator from Georgia [Mr. BERRIEN] thinks this is the same as the case of the northeastern boundary. He thinks the cases are analogous, and that Texas should have the lands falling within her boundary, as Maine had that small patch of the land of Great Britain falling within hers. With great respect, I conceive that there is no just analogy. The boundaries of the ancient colony of Massachusetts, including Maine, were originally specified in her charter, and finally settled by the treaty of peace with Great Britain in 1783. Subsequent to that treaty of peace, there had not been a war, or conquest, or purchase of any additional territory; there had been nothing done, either by this government or by the government of Great Britain, to change the *status in quo*; things remained just as they were at the peace in 1783. But that was not the condition of things between this country and Mexico. After the annexation of Texas, there had been a war, and Mexico had been driven beyond the border; we likewise paid eighteen millions and took possession of a large portion of her adjoining territory; the whole condition of parties had changed.

But, again, the analogy fails in this: In the negotiation between the United States and Great Britain, with reference to the northeastern boundary, Maine and Massachusetts were sub-parties by their commissioners, and the documents accompanying that negotiation show the understanding between those States and this government, that the land which was within the line of boundary fixed should be the territory of the States within which the land fell. That was by understanding or agreement between the parties, not by any *principle* entitling them to it. There is, therefore, in my judgment, no analogy whatever between the cases. But, again, my friend from Texas has asked, where is the title of the United States to New Mexico? Why, sir, who has the *deed*? To whom did the treaty make the transfer? We have got the paper title. Hence, if Texas says she has title, the *onus* is upon her; let her prove it. In regard to the ancient boundaries of Texas, she holds by revolt and occupancy. But how does she get New Mexico? By what act did the title pass? Upon the face of the treaty it is in this government, and it is the duty of those who allege title out of the government to show how it got out. How did Texas get it? Her senator [Mr. Rusk] now admits that she could not by the agreement with Santa Anna; he admits that she could not by the bare act of her legislature asserting her boundary. If these things be so, the treaty of Guadalupe Hidalgo, which vested the title absolutely in us, could not have matured it from an inchoate to a perfect right in Texas. But has the

United States ever claimed that Texas, or she herself, aside from the treaty of Hidalgo, had ownership within the limits of New Mexico? Never, sir; never. On the contrary, through her minister, Mr. Slidell, the United States offered to give the government of Mexico five millions, and the claims of our citizens, estimated at four or five more, for the whole province of New Mexico, or the claims of our citizens alone for that part east of the Rio Grande. No preterce of claim was then made by President Polk north of El Paso, but, on the contrary, *expressly disclaimed*. Even after annexation, we kept a consul at Santa Fe, as a Mexican town, and allowed by act of Congress drawbacks upon foreign goods exported there and to Chihuahua. That state of things continued up to the day that we took military possession of the country. But last, not least, the act of this government, when she accepted and annexed Texas, shows that we never considered New Mexico as a part of Texas. We took Texas, knowing that no citizen of New Mexico held a seat in the convention which made the transfer, or was ever invited to one there. Here we have one representative government dealing with another representative government for the transfer of the allegiance of an entire country, the sinking of its sovereignty; but yet it is pretended that we annexed New Mexico with Texas, when we knew that New Mexico had had no representative in the body that made the transfer! Sir, if it be true, it is an outrage unparalleled in political history; it would shame a despotism. Poland was destroyed before she was divided. But New Mexico is actually made the object of traffic between two representative governments, without an act of aggression, without her knowledge, and without her consent! Her national characteristics are destroyed, and her allegiance transferred to a foreign power, and that power or government is one which boasts that its basis rests wholly upon principles of popular representation! Sir, it cannot be. It would violate the first principle of our government, the very organic law of our confederacy. No, sir; neither Texas herself nor this government has ever dealt with this subject as though Texas had title to any part of New Mexico. Texas, in my judgment, has no title.

The only question then is, how much will you pay, not for her title, but for her *claim*? How much will you give to buy your peace? Let this be settled as it may, I take it that the number of slave States into which it will be *claimed* that Texas may be divided will not be diminished by the amount of territory taken from her. What price are we called upon to pay? I am willing to compromise even this groundless claim; I am willing to buy my peace at all times, by paying as much as the claim may seem to be worth. But I have no idea of paying for a claim double the full value of the property. It is difficult to treat upon this subject without assuming some hypothetical price. I have heard it stated here, by the Senator from Texas, in his place, that ten or twelve millions must be paid for the claim. Take ten millions, merely by way of hypothesis. We paid five millions for the Floridas, fifteen millions for all Louisiana, (including that vast region west of the Mississippi,) and eighteen millions only for New Mexico and California; and now we are called upon to pay ten millions, not for this *part*

of New Mexico alone, but for this *claim* to a *part*. And what are the inducements holden out for this in the committee's report? The first is that that tract of country will contain nearly one hundred and twenty-five thousand square miles of public land, and that, perchance, we shall get back our money in whole or in part by the sale of these lands. Why, sir, do we recollect that New Mexico is the oldest settled part of this continent? Do we recollect that she was settled at the time the Atlantic slope, from the entire seaboard to the mountains, was trodden by wandering savages? Is it not probable, therefore, that all that part of the valley of the Rio Grande which is worth cultivation has already been located? But what do the convention of New Mexico themselves say on this subject? I have their instructions to their delegate upon my table, and in these they state a fact which goes to show what they think of the value of their public lands. They say:

That, as our public lands are comparatively worthless, and the grant of five hundred thousand acres impracticable, said delegate insist on an equivalent in money; or, at least, that the United States pay us annually \$30,000, for the period of ten years, for the purpose of sustaining such government.

Thus we see that, in the opinion of their own convention, in the event of getting a State government, there are not public lands enough, of any value, in all New Mexico, to make up the five hundred thousand acres ordinarily given to a new State. It is perfectly obvious, therefore, that little is to be derived from that source; and how much from the rest of it, now the roving-ground of the *Cu ranches*, none can guess.

What is the next inducement which is holden out? It is said that the debt of Texas, to a certain extent at least, was secured upon the import duties of the country, and that, inasmuch as we have taken the revenues, we ought to liquidate the debt. I always supposed that it would come to that; I always supposed that, in the long run, it would be made a question whether the United States should not assume the debt of Texas. It commenced, in the first place, in reference to a debt of some seven or eight hundred thousand dollars, in regard to certain vessels which it is said were transferred to us, and on which the creditor who sold them to the State of Texas had, as was thought, an equitable lien. The next step in the progress of this movement is the present. Certain of her debts (nearly all) are charged upon certain parts of her revenue; we have taken that, and ought therefore to pay them. I do not know that there would not be some equity in this government paying the entire debt of Texas, taking her public lands. But if we ever attempt it, I want to be brought up to the thing square! I want it done face to face—directly, and not indirectly. In the first place, at the time of annexation, *we could have had Texas, paying her debts, and taking all her public lands; but that we would not do*. The proposition in effect now is, *that we are to pay all her debts, and, substantially, leave her all her lands, and give her likewise a full share in our own*. That is the result of this thing exactly. The entire debt of Texas, as shown by the return of her comptroller in 1848, was only eleven millions and odd; some of that has doubtless been liquidated by land scrip, at fifty cents per acre only, or in other ways; and we are now to pay her for this portion of New

Mexico, and that miserable part of Texas above her north line, (the roving-ground of the Cumanches,) a sum sufficient to liquidate her entire indebtedness, and, I suppose, leave her a comfortable balance! As I before said, we could have taken Texas bodily, lands and all, and paid her debts; but we refused to do that, and now we are to pay all, and yield all, and, besides, give a full share of the great public domain of this country!

I am opposed to this thing out-and-out. Leave the boundary of Texas to the courts. Let her rights be settled by the judiciary, as the rights of other States, as great as she, have been settled before.

Here Mr. DAYTON gave way to a motion to adjourn, and the Senate adjourned.

WEDNESDAY, JUNE 12, 1850.

The same subject being under consideration—

Mr. DAYTON said: Mr. President, I yesterday concluded what I had to say in reference to the title of Texas to any part of New Mexico. I will add a few words more in reference to the amount of indemnity proposed to be paid before I leave this part of the subject. The claim of Texas is, as I believe, a mere *claim*, and not a *title*. If the amount proposed to be given be in the neighborhood of ten millions, it is, in my judgment, entirely disproportionate to the actual value of the property itself; and much more is it disproportionate to the value of the claim. Why this sum should be fixed upon in preference to any other sum, I do not know.

Mr. KING. Will the senator inform us where he gets the information that that sum was fixed upon?

Mr. DAYTON. I have already said that I argued this matter hypothetically; and that I had heard the honorable senator from Texas, in the course of some remarks here a day or two since, say that the sum spoken of was ten or twelve millions. The senator from Kentucky stopped that senator by the suggestion that it was not well to discuss that question at this time; but I have repeatedly said that I am speaking of it upon hypothesis. I say, sir, that I see no reason for any such sum having been fixed upon by the committee. It seems to have been an arbitrary sum, approximating to nothing connected with the subject, except the amount of the State debt of Texas, the aggregate of which it would, I presume, cover.

Now, as a matter of bargain, what inducement is there for the *United States* to pay these ten millions? You will observe that we are now embarking in a new business. The United States government is not now buying territory from a foreign power; she is not enlarging her boundaries; she is not extending her jurisdiction. This territory in dispute lies within the bounds of New Mexico or within the bounds of Texas. So far as the jurisdiction of the United States is concerned, it covers it equally in the one aspect and in the other. By the purchase, you obtain nothing except the worthless public lands of this department of New Mexico, and to the east and north of it, which will ultimately be appropriated probably to the Texas Indians. Our jurisdiction is a jurisdiction coextensive with this territory, whether within the bounds of one State or the other. I ask, then, what inducement is there to

pay this price? It is not the value of the public lands to be found there. Why, in the State of Texas now, you may buy as rich and valuable lands as the sun shines upon for fifty cents an acre; and you may pay for them in the State debt of Texas, which is selling, I believe, at thirty or thirty-five cents to the dollar. That would make the price of her lands, perhaps, at about sixteen cents per acre. So far, therefore, as there is to be any benefit derived from the public land of New Mexico, it amounts, in my judgment, to little or nothing. The sole inducement is the settlement of some question connected with slavery. Now, if I understand the senator from Kentucky—and I think I do—this arrangement does not affect, in his judgment, that question one way or the other. If the laws and constitution of Texas are now coextensive with the territory inside of New Mexico, by this arrangement you will not alter those laws—a transfer of a country not changing the laws which cover it. You will leave the question of slavery, therefore, that senator contends, exactly where you found it. Now, if that position be correct, I ask again, with all respect to that senator, what possible inducement is there for this country to pay this amount of ten millions of money? Why, it looks to me to be little else than a gratuity upon a grand scale, to keep clear of complaint and dissatisfaction between one of the States and the central government. or, in its best aspect, it is the recognition of a kind of latent equity to pay the Texan debt. I have already said, approach that subject plainly and distinctly, and if such an equity exists (which I do not mean to admit,) recognise it directly, and act accordingly. I thus pass from this part of the subject, and proceed to another question connected with this grand scheme of compromise.

The question to which I refer is not in this bill, but is part of the scheme connected with it and one of the inducements holden out for its passage. I speak of the bill and the amendment reported by the Committee of Thirteen for the recapture and restoration of fugitive slaves. I have always supposed, Mr. President, that the number of slaves who escape may have been overestimated. If so many, I can scarcely see what becomes of them. But fortunately we will have, in the course of the current year, the means of correcting these conclusions, if wrong. The census bill just passed has a column in which are to be inserted the number of slaves escaping from the several States. But, be the evil great or small, its correction is one of those ingredients which have entered into this grand scheme of compromise. This subject of the escape of fugitive slaves has for a long time been a source of vexation and irritability along the border States. But it has now, it seems, got to be a more imposing affair. It is represented as one of the disturbing elements between the two sections of the confederacy. It has become, in short, one of those five gaping wounds out of which the life blood of the country is oozing. Sir, if so, why should it not have been discovered before? These complaints have been rife from the time of the administration of John Quincy Adams to James K. Polk, both inclusive. They have been made, reiterated, and reiterated, through all that time. But when, I ask, was it ever before thought ne-

necessary or proper that the Executive of the land should advise, in his message, as to the proper mode of catching a runaway negro? Why was it not done in either of the last two administrations, both of them subsequent to the date of the decision of the Supreme Court in 1842? Why, more especially, was it not done by the last administration, when its attention was called to the question by this very bill for the recapture of fugitive slaves? This fugitive bill has, I think, been in the Senate for at least the three past years, and the subject here much longer. But, sir, just now, under a warm impulse and the fervid glow of ready eloquence, the escape of these fugitive negroes has got to be a gaping wound, which must be healed, else the life of the confederacy will be gone. If this be a wound, it is one of those which verify the old superstition: it bleeds only when touched by a special hand. It needs the tongue of fervid eloquence to make it show its bloody drops. It has never before been in the position of an important or leading question; though I concede it has long been, among the border States, a vexatious, irritating, and annoying one. But let us proceed to the bill itself.

The constitution, Mr. President, prescribes that—

No person held to service or labor in any State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be released from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

The right to these fugitive slaves is, therefore, a clear constitutional right. Nobody can gainsay or deny it. Upon that provision of the constitution the act of 1793 was passed, and that act provides, in the third section, as follows:

That the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States residing within the State, or before any magistrate of a county, city, or town corporate, wherein his seizure or arrest shall be made; *and upon proof, to the satisfaction of such judge or magistrate, either on oral testimony or affidavit, taken before and certified by a magistrate of any such State or Territory, that the person so seized or arrested doth, under the laws of the State or Territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to the claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor to the State or Territory from which he has fled.*

Here stood the constitution, and here followed the act, requiring that *proof, to the satisfaction of the magistrate or judge before whom the slave should be taken, should be given before the slave should be delivered up.* Both the constitution and the act of 1793 left this matter to the jurisdiction which was to deliver the slave; and the practice under it, from that time forward, as will be seen by the case in *Peters*, and as all gentlemen who have had anything to do with this subject know, was to require this proof, and the slave was heard in answer. He was allowed to contest the fact. Now, remembering what the constitution and the law have been since 1793, let us see what the

Committee of Thirteen recommend for the adoption of the Senate.

I hold, Mr. President, that the recommendation of the committee on this subject is more stringent, more ultra, than anything that has ever before been offered, or anything that has ever before been asked of the Senate. It goes beyond the original bill; it goes beyond the amendment of the senator from Virginia; it goes beyond anything and everything as yet before us. The committee report the following amendment to the bill:

SEC. —. *And be it further enacted, That when any person held to service or labor in any State or Territory, or in the District of Columbia, under the laws thereof, shall escape therefrom, the party to whom such service or labor shall be due, his, her, or their agent, attorney, guardian, or trustee, may apply to any court of record therein, and make satisfactory proof to such court of the escape aforesaid, and that the person escaping owed service or labor to such party. Whereupon the court shall cause a record to be made of the matters so proved, and also of a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, authenticated by the attestation of the clerk and of the seal of said court, being produced in any other State, Territory, or District, in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer, authorized by the law of the United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence, if necessary, either oral or by affidavit, in addition to what is contained in the said record of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said court, commissioner, judge, or other person authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the State or Territory from which he escaped.*

In other words, it prescribes that the jurisdiction at home—the State from which the fugitive fled—shall adjudicate all the questions which are to be adjudicated under the constitution. It provides that the owner may take a certificate with him to the State where he is to make the arrest, and that such adjudication, so certified, *shall be final and conclusive upon the jurisdiction abroad.* In other words, it constitutes the free States the mere executive, the mere ministerial officers of the slave States, for the purpose of carrying their judgments into effect. They are to give the judgment, and we to serve the execution. That is the amount of it. Now, we are placed in no such position as that by the obligations of the constitution, and I deny your right to place us there. By the constitution you are authorized to demand of the jurisdiction where the slave is found, the redelivery of the slave; but when and how? Why, upon showing that the fugitive is a slave, and owes service to the claimant. But who are to judge of this by the constitution? Why, clearly the jurisdiction upon whom the demand is made; and such is the act of '93. Now, by this amendment, you take from the jurisdiction upon which

the demand is made the power vested in them by the constitution, and give that jurisdiction to another State, and make us its executive officer only. The entire extent of your right to legislate on this subject is prescribed by the constitution. You cannot go beyond or aside from it. There is no common-law principle or remedy about it. You have no right, you have no power, therefore, to legislate on this subject in this way. The constitution imposes the doing of the act upon the foreign jurisdiction, but it leaves that foreign jurisdiction to judge whether the facts are true upon which the act is to be done. But here you have this anomaly. You admit that the act has to be done only upon a certain state of facts; yet you call upon one jurisdiction to do the act, and another and different jurisdiction to judge of the facts.

But again, sir, I hold that it is not right to do this thing. The course of practice in these cases in the slave States I submit to the memory of professional gentlemen from those States. I have looked into some of their statutes; and every statute-book into which I have looked, so far as my memory goes, requires, if it speak on the subject at all, nothing beyond the oath of the claimant himself to entitle him to the possession of the runaway. Now, is it to be tolerated that, when a man comes into a free State, (where, upon every principle of international law, being on free soil, he is recognised as a freeman,) the oath of the man who claims to be the owner shall settle that question between him and the fugitive who denies it? That could not be done in any free State; it would be an outrage upon law and evidence.

Mr. BUTLER. I presume my friend from New Jersey has examined the statute-books; and I would really ask him if, in the course of his investigation in the slaveholding and non-slaveholding States, he has found a single instance of an owner of a slave claiming in a free State a negro to whom he had no right? I do not believe a single instance can be shown in which a slaveholder claimed a free man of the North as his property.

Mr. DAYTON. I really hardly know what is the connexion of the question of the senator from South Carolina with my argument. I will answer the senator's question, however, in a short time, when I come to that part of the subject.

Mr. BUTLER. I did not want to be misunderstood. The senator stated that it was an outrage that ought not to be tolerated that a man should take his own property, upon his own evidence, upon his own affidavit. I then asked the senator if he knew of a single instance in which a slaveholder had claimed that which was not his.

Mr. DAYTON. I submit now to the senator from South Carolina whether he can reasonably suppose that I am posted up as to the facts in regard to the case of every runaway negro in the United States. When I said this was an outrage, I was speaking not of the fact of a man taking his own property upon his own oath, as the senator says, but of the legal principle; and I said it was an outrage upon law that a man standing upon free soil, recognised there as a freeman, should be delivered up as a slave on the oath of the claimant alone, the negro himself denying it.

Mr. CLAY. With the permission of the sen-

ator from New Jersey, I will say a word. The senator from New Jersey says he has made research into the statutes of the different slave States, and that the result of that research was that the oath of the owner of a slave was everywhere deemed sufficient evidence to establish the fact of slavery.

Mr. DAYTON. I beg pardon for the interruption, but I did not say so.

Mr. CLAY. I was going to say that there was not such a law, within my recollection, in any slave State in the Union. But in every case where the question of freedom or slavery is in issue, the master can be no more a witness in that case than in any other to which he was a party.

Mr. DAYTON. I know what I intended to say and think I did say. I said I had looked into the statutes of some of the southern States, and found that, in regard to runaway negroes, the oath of the owner was sufficient to entitle him to the possession of the negro.

Mr. CLAY. I should like to see the statute which contains such a provision.

Mr. DAYTON. I will produce it, in order to satisfy the honorable senator. I was not speaking of the case where the issue was regularly made up in court, upon a petition for freedom. That was not the point I made, nor was it the subject about which we are talking. I was speaking of the master taking possession of a runaway negro, upon his own oath, and such I understand to be the practice in this District at this hour: a runaway is delivered up, if it be proved to the satisfaction of the magistrate before whom he is taken, by the oath of the claimant himself, that the runaway is his property. My impression is that where any rule of evidence has been laid down by the statutes of the States into which I have looked, it has uniformly been that which I have stated. It is certainly so in Virginia.

Mr. MASON. With the permission of the senator, I will say a few words as to the law of my own State. The senator has now made a statement, and I trust he will not consider it discourteous in me to ask him what he means. If he means to say that in the State of Virginia, in the trial of a question of freedom or slavery, the oath of the claimant, the alleged owner, is received as evidence, he is mistaken. But if he means to say that in the State of Virginia every person of the African race is considered a slave by law, and that the burden of showing that he is not a slave falls upon the party claiming freedom, he is right. That is the law of Virginia. Thus it is, that if any citizen of Virginia claims any one of the African race as his property, *prima facie* it is his property under the laws of Virginia, just as if a citizen of Virginia claimed a horse or ox to be his property, and no other claimant appeared. He is not required to take oath at all, in order to reclaim his property at home. I put the senator right at that point. The claimant is not required to take oath that the African he claims is his property, but if he meets one of the African race on the high road, and claims him as his property, he may take possession of him without any oath. But he does it at his own risk. If he claims and takes a freeman, the freeman can, on proving his freedom, recover damages for unlawful detention, the same as a white man. Now, on the subject of the o-

I suppose the senator means this: everybody in the State of Virginia is entitled by law to apprehend any of the African race who are going at large without an owner, and to commit them to jail, and the laws require the jailor to hold them. If a citizen of Virginia comes to the jail and claims the African as his property, he is entitled to take him on oath, precisely as he would any other species of property.

Mr. DAYTON. I have allowed the senator from Virginia to go on with a speech on the subject, rather than a question or explanation, because I saw exactly to what point he would come. I knew that I could not be mistaken in regard to the statutes of Virginia. Now, the senator from Virginia, so far from gainsaying, confirms every word that I said. I expressly disclaimed that the oath of the master was received as evidence upon the trial of a petition for freedom, upon a regularly made up issue. I said expressly that the oath was received as evidence, conclusive evidence, upon a claim made for a runaway negro. But the senator comes in and says that the law of Virginia is more stringent than that, and that any white man may seize upon a negro he finds at large, as he may upon a horse or an ox.

Mr. MASON. Precisely.

Mr. DAYTON. That may be one phase of the law of Virginia; and, if so, I do not see that it adds much strength to the senator's position. I did not think it necessary to allude to that, because that was not the point. But I did recollect that when the negro was taken up as a runaway, the master could present himself, and, upon his own oath, take away the negro as his property. That is exactly what I said before—nothing more, nothing less. And I say that that principle is recognised in more States than the State of Virginia. I argued from this that the tribunals of Virginia and other States would probably be satisfied with the same kind of evidence when masters should come before them acting under this amendment of the committee; that the master would thus carry their adjudication into a free State, and present it as conclusive; although there the negro, on legal principles, must be recognised as free until the contrary is shown.

Now, I submit that there is a degree of stringency in this amendment of which we have known nothing before. But it is said that we should adopt this rule because this is the rule in the case of fugitive criminals. He is charged with crime by affidavit or by indictment at home, and an authentic copy of that, taken to any State, is conclusive, so far as the delivering up of the criminal is concerned. I grant it. But I have already said, on another occasion, that there is an entire difference between the two sections of the constitution. The one section looks only to a *prima facie* case, sufficient to warrant a delivery of the alleged criminal, that he may be tried in the jurisdiction where the crime was committed. The other section, as to slaves, looks to the fact of elopement, service, and that the claimant is the owner; and by this very amendment it is required that those facts shall be adjudicated, thus admitting the difference between the sections; but then they are, by this amendment of the committee, to be adjudicated at home, and *ex parte*.

But again: it is said in the report of the committee, that it is right and proper that these

fugitive slaves be returned to the home jurisdiction from whence they fled, because the question of their slavery depends upon the laws of that State, and that its tribunals are the proper tribunals to judge of their own laws.

Well, Mr. President, that is a new argument for returning the slave to the jurisdiction from which he fled. Sir, the same principle which requires that the slave in such cases should be returned to the jurisdiction at home would require you to remit every contract or right from the State where the remedy was to be enforced to the State where the contract was made. A man takes a bond in Kentucky. He goes over into Ohio to collect it. That bond is good or bad, according to the laws of Kentucky. They are to determine it. But yet, who ever heard that that man was to be remitted to the home jurisdiction, for the purpose of claiming his money or enforcing his right? The principle is coextensive with all such cases. The *lex loci* governs the contract, the *lex fori* the remedy. There is nothing, then, I submit, in that view of the case. But there is another objection to this suggestion of an entire change of the venue. It is not only a distrust of our tribunals, but it really destroys the right of the State sovereignty to protect, according to its own judgment, persons and property within its jurisdiction, in all cases, unless where the constitution otherwise provides. You thus take away one of the necessary elements of sovereign power.

It will then be asked, and naturally asked, as you recognise this as a constitutional right, with what will you be satisfied? I answer, with the amendment of the act of 1793, recently presented by the senator from Massachusetts, [Mr. WEBSTER.] If the South will be content with that amendment, I will vote for it; and I venture to say it can be passed by a great majority of this body. The senator from Massachusetts says that this amendment has been in his desk since last February; that he prepared it upon consultation with eminent members of the profession, and with a high judicial authority, who, perhaps, has had more to do with this subject than any other of our federal judges. And upon that full consultation, professional and judicial, this amendment was prepared. We had no knowledge of this until within the last few days, when I was much gratified by its presentation. The Senate may remember that some two months since I had the honor to address this body at some length in reference to this fugitive slave question; and in the remarks that I then made, I complained of the bill from the Judiciary Committee, because, in the first place, it was a new bill covering the whole subject, instead of being, what I thought it ought to be, a mere amendment to the act of '93. This proposition of the senator from Massachusetts meets the difficulty; it is merely an amendment to the act of '93. I said furthermore, that the great exasperation and difficulty in the free States growing out of the recapture of fugitive slaves, who on our soil were recognised as free, was because it was done without show of *any process or authority* to make the arrest. This amendment of the senator from Massachusetts meets that difficulty: it prescribes that the party shall take with him the warrant to make the arrest. I contended likewise that it was right, with reference to the sentiments of the free States, to permit a jury of

twelve men to try and certify to the facts, and that such certificate be final. The amendment of the senator from Massachusetts authorizes this, in the event of the black, after due warning, swearing he does not owe service to the claimant. With this I am satisfied, though I fear the South will not be. But, whether so or not, I am rejoiced to find that this amendment was not only framed by the distinguished senator who presented it, but that it was done upon full consultation with high authority, thus endorsing in the most effective way the several principles for which I contended. I had feared, from the letter of that distinguished senator, recently published, called the Newburyport letter, that he thought there was some insurmountable objection to a jury trial; but this amendment (presented, I suppose, for action as well as consideration) is a satisfactory answer. At all events, I am willing to stand on this amendment, thus drawn and thus presented.

But it has been said that the State laws of the free States do not afford sufficient facilities for giving parties the benefit of a trial by jury. I beg to know what additional facilities are required, in a case of trial by jury, beyond those required in a trial before a judge or commissioner. Not an additional fact is to be proved, and no additional time is necessary. In my State, and I suppose in other of the free States, at least one-half of all the jury trials are tried by jurors summoned at the day of trial, and on the spot. But it has been said that State legislation has deprived the magistrates of the power of aiding in the recapture of fugitive slaves, and deprived the claimants of the use of the jails. Now, permit me to say that I think the magnitude of that evil has been somewhat overrated. The New England States, which are especially referred to, have done so; but the same authority, in referring to this fact, tells us that, so far as he can learn, there has been but one fugitive slave case well authenticated within the six New England States for the last twenty-five or thirty years. This being so, it is hardly necessary to regulate our legislation with a view to practical difficulties growing out of their laws. An act of this description was likewise passed in Pennsylvania, in, I think, 1847 or 1848; and the senator from Pennsylvania tells me that an attempt was made to repeal it at the last session; that its repeal passed one house, but did not get taken up in the other for want of time. With that exception, (which it is not likely will be continued,) there is, I believe, no such law in a single border State. There is no such law in New Jersey, Ohio, Indiana, Illinois, or in Iowa. Indeed, these States have generally stringent laws the other way. And so, too, the federal government has its marshals, who constantly take persons into custody, and must always have some place under its control for such purposes. I apprehend, upon a fair view of this matter, that the jury trial is not justly subject to the exceptions which are raised against it in the report of the committee, or from any other source. The amendment of the senator from Massachusetts relieves it from all the great expense, delays, and appeals which are deprecated. It merely substitutes the opinion of twelve men in regard to the facts, in lieu of the opinion of a judge or commissioner, and makes the verdict final; and the master may then and

there, on certificate of the facts, take away his negro. This is, in substance, the law of New Jersey now.

In contending for this jury trial, I do not pretend to any greater regard for the safety of the negro than other men. But I look at this thing with a view to the state of feeling in the free States where we live, and where this law is to be executed. I do not claim, I never have claimed, that a jury trial in a case of this kind is a constitutional right; I know some such idea that has been put forth in certain quarters. A great cry has been made about depriving runaway negroes of this constitutional right. I will not stultify myself as a lawyer, by saying that in such a case this is a constitutional right. It is no prosecution for crime; it is no suit at common law. It is no such right of jury trial as is secured by the constitution. But, although I do not put it upon that ground, I do say that a jury trial ought to be granted, as a just deference to the views and sentiments of the free States, where the law is to be executed, and where, in my judgment, it cannot be well executed in any other way.

The senator from South Carolina, [Mr. BUTLER,] a while since, asked me if, in my researches I knew of any special case where a claim for a slave, in point of fact, had been made, which claim was without foundation. I *personally know* of no such cases, though I have heard there have been such. But I do know this, (and I stated it when I last addressed the Senate,)—I do know or have satisfactory evidence, of some nine or ten cases of jury trials where full justice has been rendered to the master. In my last address on this subject I called upon southern gentlemen to state one solitary case within their knowledge where a jury had failed, under such circumstances, to do their duty upon the evidence, and I have not yet received an answer. Sir, the juries of the North have, and the juries of the South doubtless would fairly discharge the obligations which their oaths would impose upon them. Under these circumstances, a jury trial is (as I have said before) the best for the master, as well as the most satisfactory to the public; and yet this jury trial at the North has been called in this report a mere mockery. It is said that to insist upon it will be tantamount to a refusal to carry into effect our constitutional obligations; and yet they say that there is no difficulty in the way of a fair jury trial in the slave States, and that there it may be had. You fear that the fanatics and abolition societies of the North may prevent a fair trial. We, on the other hand, might complain of some of the legislation of the South, where, for instance, it is held that a man who is a member of an emancipation society cannot sit on a jury where a question of freedom or slavery is to be tried. He is, as to this, disfranchised. But I admit, I admit freely, that either in the slave or in the free States a full and fair trial may be had of the rights of the respective parties. And that being so, where should that trial take place? Should it not, upon every principle of justice and analogy, be within the jurisdiction where the arrest is made, and which is charged with the duty of *delivering up the fugitive* only upon certain facts being proved? As to the bond *without security*, which the amendment of the committee proffers, conditioned to give the slave a trial by

jury at home, I care little for it. A bond is useless where an honest man makes the claim, because he will make a claim only in a just case. The only use of a bond is where a dishonest man comes for kidnapping purposes; and the bond of such a man, without security, will be of little worth. So that I hold that the rights of the negro are not much better secured with the bond than without it. But if the black be free, see his disadvantages; the claimant may take him to a distant State, and then call upon him a thousand miles away from his friends and evidence to substantiate his right to freedom. In such a case, he would be without means and without ability to procure his evidence. The same objection does not lie to a master prosecuting in another jurisdiction. He generally has the means and the power to prosecute fully his rights. Permit me to call the attention of our southern friends to the fact that the legislation of both the North and the South on this subject has been based much on the views and sentiments of the section where the legislation has taken place. The South itself has directly overridden the constitution upon this very point of fugitive negroes. I have looked into the statute books of some half a dozen slave States, and I find they have all legislated without the slightest regard to this provision of the constitution. And I venture to say that it can now be executed in few of the southern States. You have in all your southern States provisions on the subject of runaway negroes, covering all cases of runaways, as well such as are from the State itself as those who come from out of the State. These negroes are taken up, put into jail, are advertised, and within a certain time, unless claimed by their masters, they are sold, and after deducting expenses, costs, and commission, the balance of the proceeds, if any, is deposited for the use of the master when he shall make his claim. In the State of Maryland, the sale of the runaway was made in a little over ninety days; in the State of Mississippi, in a little over six months; in some other States, in one year; and a few of them, in two years. And then, after paying all expenses and commissions, the balance, before said, goes to the master, if he shall apply for it within a given time. This limitation of time exists in some of the States, though not in all. The master must apply in the State of Louisiana within one year, in the States of Maryland and Tennessee within two years after the sale, or the slave is gone forever so far as their statutes are concerned.

Mr. DAVIS, of Mississippi. How so?

Mr. DAYTON. Because the statutes themselves express words vest a good title in the purchaser at such sale. This legislation directly disregards the constitution in this particular. And I am surprised to find this limitation of time with which the master might apply for the balance of the proceeds of the sale of his own slave. Yet it is so. Let me, for illustration merely, read from the statutes of Louisiana. After prescribing that the slave shall be sold, &c., the law goes on to say:

and said produce, thus delivered to the treasurer

This law of Maryland was enacted in 1802, and amended in 1817; no sale is now made there under these circumstances.

Changed by a subsequent act.

of the Territory, shall be kept for the use of the owner of the said slave; provided said money be claimed by the said owner within one year and one day from the date of the sale of the said slave; and in case said money shall not be claimed within the above-mentioned time, then said money shall be applied to public use, as may be directed by the legislature of this Territory.—*La. D., p. 502, sec. 3390; printed 1841.*

Now, here is a direct statute of limitations against the master's right. These limitations cannot even claim to be necessary police laws—nothing of that kind requiring that the master shall forfeit his right within one or two years. What a cry would be raised if the free States should limit the time within which the master might come for his slave! What an outrage on the constitution it would be declared! And yet sundry States of the South have in this way enacted a statute of limitations against the master's right! They regulated their legislation in reference to the sentiment and views of their own people. You do not want runaway negroes among you; neither policy nor public sentiment will justify it. You seize upon them; you sell them; you deposit the balance of proceeds for the benefit of the master; in some cases without, and in other cases with a limitation of time in which he may apply. And can it be complained of, in view of these things, that we of the North should in like manner ask in legislation some little compliance with the views and sentiments there? Can it be complained of that when you are about to take a man from our soil, where, upon every legal principle, he is free, you should at least give some evidence to our tribunals of your right? Can you expect that we will become mere ministerial officers for the execution of your judgments? I hold, with very great respect, that this amendment of the committee is, in the first place, unconstitutional; and if otherwise, it is, in the second place, unjust, and too stringent to be wise. If you pass it, you will simply increase the exasperation and excitement that have heretofore attended upon the recovery of slaves.

Mr. President, the report of the committee on this subject then ends with a suggestion, upon which I beg to say a word, and then to pass from this question of fugitive slaves. After speaking of the bill for recapture of fugitive slaves, the report says:

But if, in its practical operation, it shall be found insufficient, and if no adequate remedy can be devised for the restoration to their owners of fugitive slaves, those owners will have a just title to indemnity out of the treasury of the United States

I wish the distinguished senator from Kentucky had reasoned that position out in the report. I should like very much to have seen upon paper the process of thought by which that conclusion was attained. I do not mean to say it may not be all right; but, as a legal position, it struck me with no little surprise—a surprise greater even than did the suggestion of the honorable senator from Virginia, [Mr. MASON,] in the earlier stage of the session, when he said that, unless some efficacious remedy should be devised, they would be compelled to resort to reprisals. That, I admit, had a sort of wild border justice in it. Whatever may have been its merits as a legal doctrine, there was a kind of equity in thus visiting on the delinquent State its own sins—its own injustice.

Had he confined himself to one sort of reprisals, which the Greeks called *androlêpsia*—the seizure of men—he would have had some precedent in the books. I commend this branch of the doctrine to his consideration. It is true the doctrine is only applied where the citizens of one State were illegally detained by another; but if a slave could only be recognised as a citizen, "*pro hac vice*," they might perhaps seize a free negro, who is, in most of the free States, at best, but about half a citizen, in his stead! At least, that is the only branch of the doctrine, so far as I see, that will in any shape apply to the case. But the suggestion in the report, that there will be, for the want of another remedy, a right to indemnity out of the federal treasury, struck me with more surprise. If Pennsylvania and New Jersey were the delinquents, you would make Louisiana and Mississippi contribute to pay the damages. The North would be the delinquents, and the South have to settle at least half the bill! That is to say, the central government shall become the great underwriter, the grand endorser for all the confederated States of the Union.

If that is to be the doctrine, let us look a little abroad and see to what it will lead. It will carry us far beyond the limited field now before us. It will apply to all other kinds of constitutional duties and obligations. If you can make the central government pay damages for the unconstitutional detention of a fugitive slave, you can make it pay damages for the unconstitutional detention of a free negro!—which, in view of some laws on southern statute-books, it will be well enough to look to. There are many other provisions of the constitution which will likewise come in to be liquidated in the same way by the central government. If you once recognise the position, no man can see exactly where it will end. Sir, with all respect, I do not think the position, as a position of constitutional law, is at all well taken. I now leave this subject of fugitive slaves, with one single remark—a remark which, perhaps, I should have made in the commencement rather than now.

This amendment of the committee to the bill for the recapture of fugitive slaves provides for the recapture of slaves which escape from any State or Territory. It uses in that respect the language of the act of '93. Now, in the act of '93, that language had an obvious meaning, because there were then Territories connected with the southern States, in which the institution of slavery existed as incident to their organization. But now there are no such Territories; and the question whether there is or can be slavery in the Territories is one of the very issues between the two sections of the country. And yet this law, re-enacted anew, and in reference to the present condition of things, admits, by implication at least, that slavery exists in the Territories. This may be hypercritical; but I throw out the observation for consideration, and leave the subject.

I now come to the last point made in the report, and I shall speak of it but for a moment. It is the slave trade in the District of Columbia. The committee have very properly reported that it be abolished. This will meet the general sentiment, I presume, of both sections. These pens, these human sties, as some one has called them, are equally offensive, I understand, to the sentiment of the North and the South. Let them go. And

if there can be any declaration made in return for this small concession, that it is wrong at this time and under present circumstances, to abolish slavery in the District of Columbia, I will cheerfully join in that declaration. Although not desirous of volunteering opinions upon questions not practically before us, I will yet freely join in any declaration fairly connected with this subject, in return for the concession, if it speak my sentiment as to the law and right of the case.

This, Mr. President, ends the series of bills and the series of remedies. In expressing myself on this subject, I have spoken my individual sentiments only. I have consulted with nobody, and have concerted with nobody.

I think that these measures reported by the committee, this grand series of bills, are little else but a compromise in name. Strip them of that name, take away the motto, discard "the pomp and the circumstance," and as a measure of compromise the report will be dwarfed into the smallest possible compass. If passed, it never can accomplish what its friends declare. It is based upon the logrolling principle of legislation—a principle which has been repudiated by my own State in her constitution, as well as by the State of California in the practice growing out of which has been produced, in our State legislatures, of more iniquitous legislation than all other causes put together. And yet, sir, because we oppose this conglomeration, we are charged with being extremists, ultra-ists; persons fomenting disunion! Ay, what a beautiful medley of splits there will be when the disunionists come together! Probably the half of New Hampshire with the half of Massachusetts, the half of Mississippi with the half of Louisiana, and then with these the half at least of Missouri. Ay, that senator [Mr. BENTON] will find at last his mistake. He fancied long since that he saw disunion through the mists ahead, and forthwith he seized his club, and has laid about him like Hercules ever since. He has kept up a great noise of battle, and I thought had accomplished something, but this it seems is all a mistake; he has not even bruised the hydra's head. So far from it, the monster has not only turned his flank, but actually turned the man, and the senator now finds himself fighting upon the other side. What idle trash, what miserable charlatanism, a partisan press, is all this charge!

Sir, I do full justice to the ability and high character of this committee. I grant it patriotic in its origin as well as in its action. But if it accomplish its purposes, it will allay for a brief space only the excitement—just as an innocuous prescription will for a moment tranquillize the nerves of an over-excited, imaginative patient. But, sir, in my judgment, it is destined to accomplish nothing. Outside of the suggestions of the Executive, it has in it little useful, less practicable. It has gone up in our political sky like some splendid specimen of pyrotechnic art, attracting by its show the gaze of the country far and wide; it may burst at its topmost height. If so, a deeper darkness, more pervading gloom, may for an instant follow, but when we shall have recovered ourselves, having once more taken breath, we will proceed, I trust calmly and quietly in the performance of our duties upon the several measures in detail, and accomplish so much as the times will admit and the occasion demands.